BEFORE THE ARIZONA CORPORATION COMMISSION

CARL J. KUNASEK
CHAIRMAN
JIM IRVIN
COMMISSIONER
WILLIAM A. MUNDELL
COMMISSIONER

IN THE MATTER OF THE APPLICATION OF U S WEST COMMUNICATION, INC., A COLORADO CORPORATION, FOR A HEARING TO DETERMINE THE EARNINGS OF THE COMPANY FOR RATEMAKING PURPOSES, TO FIX A JUST AND REASONABLE RATE OF RETURN THEREON AND TO APPROVE RATE SCHEDULES DESIGNED TO DEVELOP SUCH RETURN	Docket No. T-01051B-99-0105 **COX'S NOTICE OF FILING SUMMARY OF TESTIMONY**

Cox Arizona Telcom, L.L.C., through its undersigned counsel, gives notice of filing a summary of Dr. Francis R. Collins' testimony regarding the proposed settlement agreement, a copy of which is attached hereto.

November 29, 2000.

COX ARIZONA TELCOM, L.L.C.

By _____

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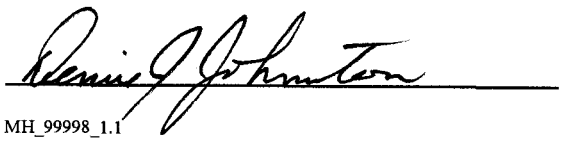

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SUMMARY OF TESTIMONY OF
DR. FRANK R. COLLINS

November 29, 2000

The proposed Settlement Agreement between Commission Staff and Qwest ("Agreement") – particularly the Price Cap Plan – contains significant problems that could act to stifle emerging telecommunications competition in Arizona. The two main deficiencies are: (i) a provision that would allow anti-competitive spot/zone-based flexible pricing and (ii) TSLRIC price floors for Qwest's flexible pricing that could lead to predatory pricing and cross-subsidization. The Agreement also allows Qwest to bypass A.A.C. R14-2-1108 and flexibly price new services and service packages. Finally, the Price Cap Plan – which is an alternative form of regulation that fundamentally alters telecommunications competition in Arizona – has arisen from a settlement in a rate case without full participation by interested or affected parties, particularly consumers and competitors.

Cox's particular concerns are as follows:

First, the Agreement proposes to implement the Price Cap Plan in an environment where significant telecommunications competition has not yet arrived, particularly when one looks at Qwest's market share. Yet, the Price Cap Plan provides Qwest tools to snuff out emerging competition. The Price Cap Plan allows that "new services and packages in Basket 3 [the competitive basket] may be offered to select customer groups based on . . . geographic location." As currently written, this provision, in effect, creates an ability for Qwest to target areas for flexible pricing even if there is little or no competition in those areas. This "spot pricing" allows Qwest to quash nascent competition as competitors begin to serve those areas. The geographic provision should be eliminated.

Second, the TSLRIC price floors for both non-competitive and competitive baskets create competitive problems. First, TSLRIC does not recover all costs of a service. Second, it is not clear that the proper imputation of costs under A.A.C. R14-2-1310.C is being considered in setting price floors. Finally, it is difficult to monitor

compliance with TSLRIC price floors, particularly given that Commission Staff does not believe that there are approved TSLRICs for all services.

Third, the Price Cap Plan provision concerning "packages of services" is flawed. The Price Cap Plan provides that Basket-1 (non-competitive) services can be combined with Basket-3 (fully competitive) services to form service packages. When doing so, Qwest can price the package of services at any level above the TSLRIC (presumably aggregate TSLRIC of the components) of the package. Basket-1 services *should* carry their Basket-1 price into the Basket 3 package and not their TSLRIC.

Fourth, Cox has a concern about the "Support and Defend" provision in the Settlement Agreement in that it is so ambiguous as to not be enforceable.

The Agreement should be modified, in part, as follows:

1. No flexible pricing for any service or service package unless it meets A.A.C. R14-2-1108.

2. For Qwest's flexible pricing, there needs to be specific approved price floors that are, at a minimum, the sum of attributed UNE prices for all UNEs that constitute the service plus an 18% mark up (the current resale discount).

3. A fourth basket should be established for emerging competitive services – that is, services that are not fully competitive.

4. The Commission should require that service packages which combine Basket-1 (non-competitive) services with Basket-3 (competitive) services carry with them their Basket-1 retail price.

5. The "Support and Defend" provision should be clarified.

6. The Agreement needs to require notice to all affected parties for any Qwest pricing changes, movement of services from basket to basket or introduction of new services or packages.

In response to the rebuttal testimony filed by Commission Staff and Qwest, Cox has the following surrebuttal:

1. Although Qwest witness Arnold characterizes Cox's testimony as being supportive of the Qwest/Staff Agreement, Cox only theoretically supports certain parts of

the Agreement as indicated in the testimony. Had Cox been a party to the negotiations of the Agreement instead of being invited to support it after the fact, Cox would have insisted that, in return for supporting these aspects of the Agreement, the pricing flexibility section and geographic spot pricing provision be removed. Cox's support at this time merely indicates that Cox has an open mind and seeks to serve the public interest. There are many components of the Agreement that are against the public interest. Moreover, Cox stands by its concerns about the "Support and Defend" provision.

2. Staff witness Shooshan once again addressed the issue of the number of "baskets" into which services are placed for the purpose of determining the degree of pricing flexibility available to them. He claims that two baskets are appropriate and justifies that claim by asserting that the Commission's rules (Rule 1108) only provides for two baskets for retail services; non-competitive and competitive. This assertion is not compelling because the Agreement does not require compliance with Rule 1108 for new services or packages to be placed in the competitive basket. The Agreement also bypasses Rule 1108 in its geographic/purchase pattern "spot pricing" provisions. If Rule 1108 is being modified by the Agreement without a rulemaking, then adding an additional basket for emerging services also would be appropriate.

Mr. Shooshan also found fault with my package price proposal and asserts that the aggregate TSLRIC price floor is adequate for packages. However, he ignores Qwest's view of the Price Cap Plan. The purpose of a "basket" is to designate services that should have parallel treatment in establishing their retail price. The 1FR service is in Basket 1 and all Basket-1 services should be treated similarly when they are included in "service packages." When Qwest was asked in discovery if it would agree not to recover any costs above TSLRIC which are attributable to a service from other services, Qwest refused to agree. [*See* Qwest Response to Cox Data Request No. 1-008 (attached at Tab B to my 11/13/00 testimony)] This indicates Qwest knows that it will have to recover the

difference between the higher cost that should be the true price floor and the lower TSLRIC cost that is the artificial price floor.

3. Although Staff witness Dunkel disagrees with my position that the price floor should be the imputed UNE costs plus the appropriately assigned shared and common costs plus assignable marketing costs because there is no mapping between UNEs and service prices, he has mischaracterized the meaning of that portion of my testimony. The testimony does not indicate that 100% of the UNE costs be included – contrary to Mr. Dunkel's assertion. My testimony indicates that the appropriate UNEs have their cost attributed to the services that use them. In fact, one should be able to aggregate the imputed loop UNE costs across all of the services that use the loop and that aggregate should add to the total loop UNE cost. Moreover, Dunkel admits (on p. 6, lines 17 to 20) that pricing a service at the TSLRIC floor leaves costs attributable to that service to be recovered from revenue streams of other services. Dunkel claims:

> "Pricing above TSLRIC of a service is how the common/joint/shared costs of a company are recovered. For example, pricing above the direct (TSLRIC) cost of products is how stores and restaurants pay their rent and other joint and common costs."

This is a clear indication that pricing at TSLRIC leaves the recovery of assignable shared and common cost to other services and this is a cross-subsidy between these services and the one priced at TSLRIC. The only way to avoid this cross-subsidy is to have a price floor that is above TSLRIC as I have recommended.

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